

<p style="text-align: center;">HIGHLIGHTS OF PROPOSITION 36 THE SUBSTANCE ABUSE AND CRIME PREVENTION ACT</p>
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1) PURPOSE

- a) To divert from incarceration into community-based substance abuse treatment programs nonviolent defendants, probationers, and parolees charged with simple drug possession or drug use offenses [Health and Safety Code section 11054, 11055, 11056, 11057, 11058, 11550]
- b) To save hundreds of millions of dollars each year on the incarceration of non-violent drug users who would be better served by community-based treatment
- c) To reduce drug-related crime and preserving jails and prison cells for serious and violent offenders, and improve public health by reducing drug abuse and drug dependence through proven and effective drug treatment strategies.

2) ELIGIBILITY AND EXCLUSIONS

- a) All offenders who are charged with a nonviolent drug offense are potentially eligible for drug treatment.
 - i) nonviolent drug possession offenses;
 - ii) unlawful possession, use, and transportation for personal use; or
 - iii) being under the influence of controlled substances.
- b) Excluded if the offender has been convicted of one or more serious or violent felonies within the last 5 years.
- c) Excluded if the offender is convicted, in the same proceeding as the drug offense, of a misdemeanor not related to the use of drugs or any felony.
 - i) the simple possession of drugs or paraphernalia;
 - ii) being present when drugs are used; or
 - iii) failure to register as a drug offender.
- d) Excluded if the offender uses a firearm while under the influence or possesses certain drugs (cocaine, heroin, methamphetamine, or phencyclidine).
- e) Defendant refuses drug treatment as a condition of probation.

3) LICENSURE AND TREATMENT REQUIREMENTS

- a) Drug treatment programs should be licensed or certified.
- b) Acceptable programs include one or more of the following: outpatient treatment, half-way house treatment, narcotic replacement therapy, drug education or prevention courses, and/or limited inpatient or residential drug treatment.
- c) Successful completion of treatment means that the offender has completed the assigned drug treatment program with reasonable cause to believe that defendant will not abuse controlled substances in the future.
- d) Drug treatment may not exceed 12 months, with an additional 6 months for aftercare.

4) SENTENCING AND PROBATION REQUIREMENTS

- a) Defendants with two prior convictions for nonviolent drug possession offenses or who have participated in, but not completed court-ordered drug treatment two separate times AND are found by the court to be unamenable to any form of drug treatment by clear and convincing evidence SHALL be sentenced to 30 days in jail. The 30-day sentence is in spite of any other law provisions.
- b) Court may order, in addition to participation in and completion of a drug treatment program, vocational training, family counseling, literacy training, and/or community service. The court may order no jail time as a condition of probation.
- c) The Probation Department has 7 days to notify the drug treatment provider, and the treatment provider has 30 days from this notice to prepare a treatment plan for the offender. Probation will receive a quarterly progress report from the treatment provider.
- d) A change in treatment plans can be made at any time if the treatment provider notifies the Probation Department that the offender is unamenable to their treatment but may be amenable to another treatment program
- e) If the treatment provider notifies the Probation Department that the offender is unamenable to any form of treatment, the Probation Department may move to revoke probation. However, the offender may remain in treatment and on probation if he or she proves by a preponderance of the evidence at the revocation hearing that there is a treatment program to which he or she is amenable.
- f) After completion of drug treatment, the offender may petition the sentencing court for dismissal of the charges and expungement of arrest record [exceptions noted for certain public office: or law enforcement employment inquiries].

5) VIOLATION OF PROBATION

- a) First violation related to drug use; the state must show by a preponderance that the offender poses a danger to the safety of others before probation is revoked.
- b) Second violation for drug use; the state must show by a preponderance that the offender is a danger to the safety of others OR is unamenable to drug treatment before probation is revoked.
- c) To determine unamenability, consider:
 - i) serious violation of rules at the treatment program;
 - ii) repeated violation of program rules, inhibiting functioning in the program;
 - iii) continually refusing to participate in the program; or
 - iv) being asked to be removed from the program.
- d) Third violation for drug use; revocation is limited only by proof of the violation.
- e) If the offenders' probation is revoked, then sentence is imposed based on applicable law.

6) PAROLE

- a) Parole is not revoked for commission of a nonviolent drug offense or related condition of parole.
- b) Parolees are provided the same benefits and conditions as described for offenders on probation with one exception. Parolees only get one "excused" violation for drug use.

7) FUNDING

- a) Establishes Substance Abuse Treatment Trust Fund with \$60 million for fiscal year 2000-2001 and \$120 million every subsequent fiscal year, concluding fiscal year 2005-2006.
- b) Fund may be supplemented by the Legislature and has no expenditure time limit (carry over every fiscal year).
- c) Pass-through monies from Health and Welfare Agency through State Department of Alcohol and Drug Program to counties to cover the following costs:
 - Drug treatment program
 - Vocational training
 - Family counseling
 - Literacy training
 - Probation department costs

- Court monitoring costs
 - Any miscellaneous costs, EXCEPT DRUG TESTING
- d) Fair and equitable distribution formula may include (1) per capita arrests for controlled substance possession violation and (2) substance abuse treatment caseload deemed necessary by DADP.
 - e) Reserves may be established for the following: (1) direct contracts with drug treatment providers, (2) cover annual evaluation costs, and (3) cover long-term study costs [.5%]
 - f) Supplanting funds from any existing fund source or mechanism currently used to provide substance abuse treatment with Substance Abuse Treatment Trust Fund is not allowed.
 - g) Funding for drug testing is excluded and no specific drug testing is required as part of the drug treatment under the Act.
 - h) Community drug treatment program must meet valid local government zoning ordinances and development agreements to receive funding.
 - i) DADP to conduct annual study to evaluate effectiveness and financial impact, considering the following factors:
 - Implementation process
 - Review of lower incarceration costs
 - Reduction in crime
 - Reduced prison and jail construction
 - Reduced welfare costs
 - Adequacy of funds appropriated
 - Any other impacts identified by DADP
 - j) Conduct annual long-term study by public university in California aimed at evaluating effectiveness and financial impact.
 - k) Annual county reports required, detailing number and characteristics of clients-participants (DADP to develop reporting forms and establish reporting deadline).
 - l) DADP shall audit county expenditures annually. Counties shall repay DADP if funds are not spent in accordance with requirements of this Act.
 - m) Approval from DADP will be required for counties to retain unspent funds.
 - n) Amendment to the Act will require 2/3 vote by both houses.

OTHER KEY COMPONENTS

- a) Drug treatment in conjunction with prison or jail time does not qualify as “drug treatment program” under the Act.
- b) Court may order defendant to pay treatment costs, based on financial ability.
- c) Although funding is approved for court monitoring, regular court reviews are not mentioned as part of the drug treatment progress review process.
- d) Funding for Parole Authority to implement the Act is excluded from the DADP appropriation.